



INTERIOR BOARD OF INDIAN APPEALS

Estate of Eugene Patrick Dupuis

11 IBIA 11 (12/28/1982)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF EUGENE PATRICK DUPUIS

IBIA 82-54

Decided December 28, 1982

Appeal from decision by Administrative Law Judge Keith L. Burrowes denying petition to reopen estate (IP-BI 543D 78).

Affirmed.

1. Indian Probate: Guardian Ad Litem: Generally--Indian Probate:
Notice of Hearing: Generally--Indian Probate: Reopening:
Standing to Petition for Reopening

Under 43 CFR 4.242(h), a petition to reopen a closed Indian trust estate must be filed by a person who had no notice of the original hearing. Notice to and active representation by the guardian ad litem of a minor constitutes notice to the minor.

2. Regulations: Publication

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Terry A. Wallace, Esq., for appellant Cheryl Dean Dupuis McClure; Philip J. Grainey, Esq., for appellee Patricia L. Cousins. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

This appeal arises from the denial of a petition to reopen the estate of Eugene Patrick Dupuis (decedent). Decedent, who died on May 29, 1978, of gunshot wounds, did not leave a will. Following an August 2, 1978, hearing into decedent's estate and the conclusion of certain state proceedings investigating decedent's death, an order was issued by Administrative Law Judge David J. McKee on February 26, 1979. This order found that decedent was survived by a common-law spouse and three children, including Cheryl Dean Dupuis McClure, appellant here, who was a minor at the time of her father's death and was represented at the probate hearing by her aunt and guardian ad litem, Duretta Billedeaux. The order further found that decedent's common-law spouse and three children were entitled to share in the estate.

Appellant filed a petition for rehearing from this order, seeking to reverse the finding that decedent had entered into a common-law marriage. This petition was denied by Judge McKee on May 23, 1979. Although appellant was informed of her right to appeal this denial, no appeal was taken.

Appellant filed a petition to reopen on May 27, 1982, more than 3 years after the date of the initial decision. Because Judge McKee had retired, this petition was assigned to Administrative Law Judge Keith L. Burrowes. Judge Burrowes denied the petition on June 7, 1982. Appellant appealed this decision on August 4, 1982. She continues to allege, as she did in both her 1979 petition for rehearing and her 1982 petition to reopen, that evidence exists indicating decedent did not have a common-law wife at the time of his death. In addition, appellant contends for the first time on appeal that misconduct by the two Administrative Law Judges involved in the probate of this estate requires reopening under 43 CFR 4.242(h).

Appellant filed two affidavits in support of her allegations of misconduct. The first, signed by Duretta Billedeaux, alleges Judge McKee failed to inform her how to proceed at the hearing and that the Judge appeared intoxicated, acted in a manner antagonistic to appellant, and showed personal bias against her. The second affidavit, signed by the tribal attorney for the Confederated Salish and Kootenai Tribes, states she was informed at a social gathering by Judge Burrowes that the estate could be reopened for good cause shown following Judge McKee's impending retirement. The affidavit further states when Judge Burrowes was assigned to hear the petition for reopening after Judge McKee's retirement, he denied the petition. Based upon these affidavits, appellant contends that she was harmed by the incompetence of one Administrative Law Judge and was actually misled to her detriment by a second.

Discussion and Conclusions

Numerous decisions of this Board have construed the provisions of 43 CFR 4.242, which provides the procedure for reopening closed Indian trust estates. Those decisions are reviewed in detail in the context of the petition for reopening granted in Estate of Snipe, 9 IBIA 20, 23 (1981).

[1] Under 43 CFR 4.242(h), a petition for reopening filed more than 3 years after the date of the initial decision must be filed by a person who "had no actual notice of the original proceedings; and * * * [who] was not on the reservation or otherwise in the vicinity at any time while the public notices [of the hearing] were posted." This regulation is intended to allow an end to litigation by preventing, through the application of res judicata, the filing of petitions for reopening by those individuals who were present at or had notice of the hearing.

As is clear from the record, appellant received notice of the probate proceedings and was actually present. Although at the time of the hearing appellant was a minor, she was actively represented by her guardian ad litem. There is no suggestion that appellant did not receive adequate representation by her guardian. See Estate of Katie Crossguns, 10 IBIA 141 (1982).

Therefore, because appellant does not meet the requirements of a person eligible to file a petition to reopen under 43 CFR 4.242(h), the petition was properly denied.

Appellant contends that, regardless of these provisions, she should be permitted to file a petition to reopen since she did not pursue her right to appeal from the adverse decision on her earlier petition for rehearing because she was allegedly misled by Judge Burrowes as to the authority for and prerequisites of reopening. The basis for this allegation is that, in a conversation at a social meeting, Judge Burrowes led the tribal attorney to believe that any estate could be reopened at any time for good cause.

[2] The Board cannot know what the tribal attorney actually said to Judge Burrowes, or what the Judge's understanding was of the situation being related. In any case, however, procedural rights are set forth in the regulations in 43 CFR Part 4, Subpart D. All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Charles L. Roberts, 65 IBLA 67 (1982).

It is obvious from the record that if appellant was not actually represented by the tribal attorney at the time of the filing of the petition for rehearing, she was at least being advised by her and was relying upon her advice. Even a cursory reading of the regulations shows that there is no provision for excuse of the procedural requirement that a petition for reopening must be filed by a person who had no notice of the original hearing. Therefore, regardless of the comments made by Judge Burrowes, appellant should have been advised to file a notice of appeal from the adverse decision on her petition for rehearing. The Board will not excuse the failure to file a notice of appeal from the denial of appellant's petition for rehearing by permitting her to file a petition for reopening in contravention of the regulations.

Furthermore, even if the Board were to grant reopening, appellant has alleged no grounds sufficient to cause reversal of the original decision. Appellant alleges she will present evidence tending to show that decedent did not have a common-law wife at the time of his death. Evidence on this issue was presented at the original probate hearing. ^{1/} The Administrative Law Judge acknowledged that contrary evidence on this fact was

^{1/} Appellant alleges that the Administrative Law Judge should have ordered a supplemental hearing on the question of the alleged common-law marriage. Appellant's guardian ad litem did not request any extension in which to develop further evidence and did not indicate in any other way that she could or wished to present any additional evidence on the question. The Judge is not required to anticipate what a party in a probate proceeding might want to do. In the absence of any indication from appellant or her representative that she had further evidence, he was not required to order a continuance or supplemental hearing.

The petition for rehearing filed immediately after the hearing also did not require rehearing on the grounds of newly discovered evidence. 43 CFR 4.241. Appellant made no allegation that the evidence she sought to present was not available to her at the time of the hearing and offered no showing why she could not have presented the evidence at that hearing. Appellant states only that she was upset because of the recent demise of her father and the proceedings pending against her. Her guardian ad litem, however, was available to assist her both in anticipating that the relationship of her father with the woman with whom he was living would be at issue and in presenting evidence showing that a common-law marriage did not exist.

presented and found that he gave more credence to that evidence showing that a common-law marriage did exist than to that denying the marriage. Appellant has presented only generalized statements contradicting this finding. No specific information has been alleged that is sufficient to warrant reopening.

Appellant alleges that the finding of a common-law marriage was made partly to punish her by denying her her full share of the estate because of the Judge's personal bias against her. This allegation of bias is based upon Judge McKee's inquiries of the county prosecutor of the status of criminal charges brought against appellant in juvenile court in connection with her father's death. Judge McKee's inquiries were entirely proper because under both Montana law, Mont. Code Ann. § 91A-2-803, and Departmental regulation, 43 CFR 4.262, a person convicted of the felonious taking of another's life is prohibited from participating in that person's estate.

Appellant states the county prosecutor was angry over the jury's verdict of not guilty and wrote an inflammatory letter to Judge McKee following the decision in which he stated his belief that appellant was guilty and gave reasons for the jury's verdict. Appellant alleges this letter caused the Judge to be biased against her despite the finding that she was not guilty.

A review of the order determining heirs makes it clear, despite the nature of the letters from the county prosecutor and whatever that official's personal beliefs may have been, Judge McKee found both that appellant had been found not guilty of her father's death in the state proceeding and that no evidence to the contrary had been presented to him. 2/ The Judge specifically found appellant was not guilty of the felonious taking of decedent's life and was entitled to inherit. There is no evidence that the Judge was biased against appellant or that his ability to treat the evidence objectively was impaired.

Furthermore, the finding decedent was survived by a common-law spouse was based upon strong evidence furnished by disinterested witnesses. Nowhere is there any indication the Judge did anything other than weigh the evidence presented to him to find he was persuaded by the evidence presented by the common-law wife. The Board sees no reason to disturb this finding. 3/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision denying reopening is affirmed.

2/ Indeed, the state charges pending against appellant were not even raised at the probate hearing.

3/ The Board addresses appellant's allegation that the Judge was intoxicated at the hearing only to the extent of noting that whether or not he was technically intoxicated (a matter not susceptible to proof from the record before us), the conduct of the hearing was not impaired and he committed no reversible error.

This decision is final for the Department.

//original signed
Franklin D. Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge